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accuracy of 100 meters for 67 percent of calls and 300 meters for 95 percent of calls.⁶ A carrier using a network-based solution must provide ALI to 50 percent of its coverage area, or 50 percent of its population, beginning on October 1, 2001 or within six months of a PSAP request, whichever is later, and to 100 percent of callers within 18 months of that request or by October 1, 2002, whichever is later.

3. On June 12, 2002, the Commission adopted a consent decree terminating an Enforcement Bureau investigation into whether AT&T Wireless was in compliance with the E911 Phase II rules with respect to its TDMA network.⁷ Pursuant to the consent decree, AT&T Wireless agreed to a specific timeline for deployment of a network-based location technology on its TDMA network. Paragraph 12(a)(2) of the consent decree required AT&T Wireless to deploy a Phase II compliant technology at a minimum of 2,000 cell sites and provide Phase II service at all these sites by December 31, 2002.⁸ AT&T Wireless is subject to a \$300,000 automatic penalty if it fails to meet this benchmark.⁹

4. On December 24, 2002, AT&T Wireless filed a request to clarify or modify the December 31, 2002 benchmark.¹⁰ In this request, AT&T Wireless indicated that it deployed Phase II technology at 2,605 cell sites by December 31, 2002, but was not providing Phase II location information to PSAPs at the minimum required 2,000 cell sites by December 31, 2002. Specifically, AT&T Wireless stated, as of December 31, 2002, it was providing Phase II location information to PSAPs served by 1,168 of the 2,605 cell sites at which it had deployed Phase II technology. AT&T Wireless asserted that the 116 PSAPs associated with the remaining 1,437 cell sites at which it had deployed Phase II technology were not ready to receive and utilize Phase II data by December 31, 2002. Although these 116 PSAPs were not ready to receive and utilize Phase II data, AT&T Wireless stated that it conducted “short testing” with these PSAPs to confirm the operational readiness of AT&T Wireless’s network to deliver Phase II data.¹¹ AT&T Wireless seeks clarification that it is “providing Phase II service” within the meaning of the consent decree when it has taken all the steps necessary and possible to deliver Phase II data to the PSAP and has conducted short tests to confirm the operational readiness of the location system to deliver Phase II data, even if the PSAP is unable or unwilling to receive and utilize the data. In the alternative, AT&T Wireless requests modification of the December 31, 2002 benchmark to require *either* the completion of short testing *or* the integration of Phase II service at a minimum of 2,000 cell sites by December 31, 2002.

5. On January 7, 2003, at the request of the Enforcement Bureau, AT&T Wireless submitted certifications for the 116 PSAPs associated with the 1,437 cell sites substantially consistent with the new rules adopted in the *City of Richardson Reconsideration Order*.¹² In response to a request for additional

⁶ 47 C.F.R. § 20.18(h)(1).

⁷ *TDMA Consent Decree*, 17 FCC Rcd 11510.

⁸ *Id.* at 11514.

⁹ *Id.* at 11515.

¹⁰ AT&T Wireless Services, Inc. Request to Clarify or Modify Benchmark, filed December 24, 2002.

¹¹ AT&T Wireless explains that “short testing” means that it and the PSAP connect their E911 systems to the extent possible given the missing pieces on the PSAP side, determine whether the voice path is routed to the correct PSAP, and assess whether the AT&T Wireless network, including the Wireless Location Service devices at the cell sites, Position Determining Equipment, Mobile Switching Center and the Intrado Service Control Point/ALI database, are fully integrated and capable of providing Phase II data for the applicable service area.

¹² *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Petition of City of Richardson, Texas*, Order on Reconsideration, CC Docket No. 94-102, 17 FCC Rcd 24282

information from the Enforcement Bureau,¹³ AT&T Wireless subsequently supplemented its certification filing.¹⁴ AT&T Wireless's certification filing included letters from PSAP requesting entities representing 112 PSAPs associated with 1,368 cell sites. In these letters, the PSAPs acknowledge that they are not yet ready to receive Phase II service for various reasons and that AT&T Wireless completed all necessary steps towards E911 implementation that are not dependent on PSAP readiness. With respect to the remaining four PSAPs, which are associated with 69 cell sites, AT&T Wireless certified that it had completed all necessary steps towards E911 implementation that are not dependent on PSAP readiness and documented the basis for its conclusion that the PSAPs are not yet ready to receive and utilize Phase II service.¹⁵

III. DISCUSSION

6. In its request to clarify or modify the December 31, 2002 benchmark, AT&T Wireless seeks clarification that it is "providing Phase II service" within the meaning of the consent decree when it has taken all the steps necessary and possible to deliver Phase II data to the PSAP and has conducted short tests to confirm the operational readiness of its location system to deliver Phase II data, even if the PSAP is unable or unwilling to receive and utilize the data. We deny this clarification request. We think that it is clear that the requirement in the consent decree that AT&T Wireless "provide Phase II service" means that the carrier must fully integrate its Phase II location system with the PSAP and begin delivering Phase II location information to the PSAP, which is capable of, and actually is, receiving the Phase II data.

7. Nevertheless, after reviewing the certification filing submitted by AT&T Wireless, we conclude that AT&T Wireless satisfied the December 31, 2002 benchmark, as modified by the rules adopted in the *City of Richardson Reconsideration Order*. Under the new certification process adopted in the *City of Richardson Reconsideration Order*, a wireless carrier that has completed all necessary steps towards E911 implementation that are not dependent on PSAP readiness may have its E911 obligation temporarily tolled if the PSAP is not ready to receive the E911 information at the end of the six-month implementation period and the carrier files a certification to that effect with the Commission.¹⁶ The *City of Richardson Reconsideration Order* explicitly states that deadlines to complete PSAP requests for E911

(2002) ("*City of Richardson Reconsideration Order*"), *petitions for recon. pending*. Although the new rules adopted in the *City of Richardson Reconsideration Order* had not yet taken effect, the Enforcement Bureau requested that AT&T Wireless submit these certifications in order to evaluate fully its assertion that the 116 PSAPs are not ready to receive and utilize Phase II data. Because the rules were not in effect, certain procedural aspects of the rules were not relevant here.

¹³ Letter from Joseph P. Casey, Chief, Technical and Public Safety Division, Enforcement Bureau, to Douglas I. Brandon, Vice President – External Affairs & Law, AT&T Wireless Services, Inc. (February 3, 2003).

¹⁴ AT&T Wireless responded to the Enforcement Bureau's request for additional information on February 19, 2003, and supplemented its response on February 21, March 13, and March 25, 2003.

¹⁵ AT&T Wireless indicated that these four PSAPs were not ready to receive and utilize Phase II service due to delays in completing necessary equipment upgrades. Two of the four PSAPs have completed the equipment upgrades and are now receiving Phase II location data from AT&T Wireless. The other two PSAPs expect to complete their equipment upgrades by April 2003.

¹⁶ *City of Richardson Reconsideration Order*, 17 FCC Rcd at 24286-7.

service established in consent decrees negotiated between the Commission and particular carriers are subject to the certification process.¹⁷

8. Paragraph 12(a)(2) of the consent decree required AT&T Wireless to deploy a Phase II compliant technology at a minimum of 2,000 cell sites on its TDMA network and provide Phase II service at all these sites by December 31, 2002. As of December 31, 2002, AT&T Wireless had deployed Phase II technology at 2,605 cell sites and fully integrated Phase II service at 1,168 of these cell sites. AT&T Wireless asserts that the 116 PSAPs associated with the remaining 1,437 cell sites at which it had deployed Phase II technology were not ready to receive and utilize Phase II location information by December 31, 2002. The certification filing submitted by AT&T Wireless supports this assertion. AT&T Wireless provided letters from PSAP requesting entities representing 112 PSAPs associated with 1,368 cell sites. These PSAPs acknowledge that they are not ready to receive and utilize Phase II service and that AT&T Wireless completed all necessary steps towards E911 implementation that are independent of PSAP readiness. In addition, with respect to the other four PSAPs, which are associated with 69 cell sites, AT&T Wireless certified that it completed all necessary steps towards E911 implementation that are not dependent on PSAP readiness and documented the basis for its conclusion that the PSAPs are not yet ready to receive and utilize Phase II service. We find that AT&T Wireless's certification filing substantially complies with the certification process adopted in the *City of Richardson Reconsideration Order*. Accordingly, we conclude that AT&T Wireless satisfied the December 31, 2002 benchmark, as modified by the rules adopted in the *City of Richardson Reconsideration Order*.¹⁸

9. Finally, because we have concluded that AT&T Wireless satisfied the December 31, 2002 benchmark, as modified by the new certification rules, we need not address its request to modify the benchmark. We therefore dismiss the modification request as moot.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED**, that AT&T Wireless's request to clarify or modify the December 31, 2002 benchmark in the *TDMA Consent Decree* **IS DENIED** to the extent indicated herein and **IS** otherwise **DISMISSED** as moot.

11. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by first class mail and certified mail return receipt requested to Douglas I. Brandon, Vice President, External Affairs and

¹⁷ *Id.* at 24287.

¹⁸ As set forth in the *City of Richardson Reconsideration Order*, AT&T Wireless's certification filing temporarily tolls its obligation to implement Phase II service with respect to these 116 PSAPs. AT&T Wireless must begin delivering Phase II service to each of these PSAPs within 90 days after the PSAP provides the carrier with written notice that the PSAP is capable of receiving and utilizing Phase II location data. *Id.* at 24287.

Law, AT&T Wireless Services, Inc., Fourth Floor, 1150 Connecticut Avenue, N.W., Washington, DC 20036, and to Michelle M. Mundt, Esq., Mintz, Levin, Cohn, Ferris, Glovsky, and Popeo, P.C., 701 Pennsylvania Avenue, N.W., Suite 900, Washington, D.C. 20004.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau